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10/644,761	08/21/2003	Paul J. Lemens	044971-0304705	7292
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PILLSBURY WINTHROP SHAW PITTMAN, LLP			EXAMINER	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/644,761

Applicant(s)

LEMENS ET AL.

Examiner

Lester L. Vanterpool

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-9,11 and 13-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-9,11 and 13-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 8, 2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, 6, 7, 9, 11, 13, 14, 16 – 23, 35 & 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Roach (U.S. Patent Number 3869074).

Roach discloses harness (10) (See Column 1, lines 40 – 47); the main body (12 & 32) capable of being positioned so as to be located adjacent the user's back when the wearable device is worn in the operative position; one or more retainers (50 & 52); the receptacle (24); and the one or more support member (28) (See Figures 1 – 5).

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Regarding claim 2, Roach discloses the one or more retainers (50 & 52) are constructed to permit limited lateral movement of the elongated structure relative to the main body (32) (See Figures 1 – 4).

Regarding claim 4, Roach discloses the one or more support members (28) attach the receptacle to the main body (12 & 32) (See Figure 2).

Regarding claim 6, Roach discloses the one or more elongated support members (28) include a plurality of flexible straps connected between the main body (12 & 32) and the receptacle (24) (See Figure 2).

Regarding claim 7, Roach discloses each of the flexible straps (See Figure 1) are capable of having length adjusters (linkage addition or linkage removal) that are capable of length adjustment to enable adjustment of a distance at which the receptacle (24) is suspended below the main body (12 & 32) when the wearable device (10) is worn in the operative position.

Regarding claim 9, Roach discloses the receptacle (24) is capable of vertical adjustable (linkage addition or linkage removal) to enable adjustment of the distance at which the receptacle (24) is suspended below the harness (10) when the wearable device is worn in the operative position (See Figures 1 & 2).

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Regarding claim 11, Roach discloses the one or more support members (28) attach the receptacle (24) to the main body (12 & 32) (See Figures 1 & 2).

Regarding claim 13, Roach discloses the one or more elongated support members (28) each capable of having a length adjuster (linkage addition or linkage removal) to enable adjustment of the distance at which the receptacle (24) suspends below the main body (12) when the wearable device (10) is worn in the operative position (See Figures 1 & 2).

Regarding claim 14, Roach discloses the one ore more elongated support members (28) includes a plurality of flexible straps (See Figure 1) connected between the main body (12) and the receptacle (24) (See Figures 1 & 2).

Regarding claim 16, Roach discloses the receptacle (24) is made of a flexible fabric formed to define a pocket for receiving one of the opposing ends of the elongated structure (See Column 1, line 53) (See Figures 1, 2 & 5).

Regarding claim 17, Roach discloses the receptacle (24) is made of a flexible fabric formed to define a pocket for receiving one of the opposing ends of the elongated structure (See Figures 1, 2 & 5).

Regarding claim 18, Roach discloses the receptacle (24) is made of a flexible fabric formed to define a pocket for receiving one of the opposing ends of the elongated structure (See Figures 1 – 4).

Regarding claim 19, (See claim 18 rejection above) (See Figures 1 – 4).

Regarding claim 20, (See claim 18 rejection above) (See Figures 1 – 4).

Regarding claim 21, (See claim 18 rejection above) (See Figures 1 – 4).

Regarding claim 22, Roach discloses each of the one or more retainers (50 & 52) defines an opening that faces generally vertically when the wearable device is worn in the operative position, the generally vertically facing opening enabling the elongated structure to be received therein and extend therethrough (See Figures 1 – 4).

Regarding claim 23, Roach discloses each of the one or more retainers (50 & 52) includes the loop (52) (See Figure 1) attached to the main body (32), the loop (52) defining the generally vertically facing opening (See Figures 1 – 4).

Regarding claim 35, (See claim 22 rejection above) (See Figures 1 – 4).

Regarding claim 36, (See claim 23 rejection above) (See Figures 1 – 4).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roach (U.S. Patent Number 3869074) in view of Homeyer (U.S. Patent Number 5664721).

However, Roach does not disclose the length adjusters are buckles.

Homeyer teaches the length adjusters are buckles (8A, 8B, 9A & 9B) (See Figures 1 & 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the length adjusters buckles as taught by Homeyer with the device of Roach in order to accommodate various users with different heights.

Regarding claim 15, (See claim 8 rejection above).

6. Claims 24 – 34 & 37 – 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roach (U.S. Patent Number 3869074) in view of Amos (U.S. Patent Number 4518107).

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However, Roach does not disclose each loop includes a pair of separable members that releasably attach to one another, the releasable attachment of each loop enabling the separable members to be separated to open the associated loop and accommodate radial receipt of the elongated structure into the opening thereof, and also enabling the separable members to be re-attached to close the associated loop and retain the elongated structure.

Amos teaches each loop (6 & 8) includes a pair of separable members (See Figure 1) that releasably attach to one another, the releasable attachment (10 & 12) of each loop (6 & 8) enabling the separable members to be separated to open the associated loop (6 & 8) and accommodate radial receipt of the elongated structure (32 & 38) into the opening thereof, and also enabling the separable members to be re-attached to close the associated loop and retain the elongated structure (See Figures 1 & 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make each loop includes a pair of separable members that releasably attach to one another, the releasable attachment of each loop enabling the separable members to be separated to open the associated loop and accommodate radial receipt of the elongated structure into the opening thereof, and also enabling the separable members to be re-attached to close the associated loop and retain the elongated structure as taught by Amos with the device of Roach in order to enhance security, anchoring and reduce excess movement.



Regarding claim 25, Roach as modified above discloses the separable members (See Figure 1) of each loop (6 & 8) are flexible.

Regarding claim 26, Roach as modified above discloses the releasable attachment (10 & 12) of each loop (6 & 8) is provided by a hook and pile fastener having a plurality of hooks on one separable member and a pile on the other separable member (See Column 3, lines 64 & 65) (See Figure 1).

Regarding claim 27, Roach as modified above discloses each loop (6 & 8) is defined by a strap (See Figure 1) and wherein the separable members are the opposing ends of the strap (See Figure 1).

Regarding claim 28, (See claim 26 rejection above) (See Figure 1).

Regarding claim 29, (See claim 24 rejection above) (See Figure 1).

Regarding claim 30, (See claim 25 rejection above) (See Figure 1).

Regarding claim 31, (See claim 26 rejection above) (See Figure 1).

Regarding claim 32, Roach as modified above discloses each of the one or more retainers (See Figure 1) includes a loop (6 & 8) attached to the main body (4) with the

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loop (6 & 8) defining the generally vertically facing opening, the separable members (See Figure 1) being part of the loop (6 & 8) (See Figure 1).

Regarding claim 33, (See claim 27 rejection above) (See Figure 1).

Regarding claim 34, (See claim 28 rejection above) (See Figure 1).

Regarding claim 37, (See claims 24 & 29 rejections above) (See Figures 1 & 2).

Regarding claim 38, (See claims 25 & 30 rejections above) (See Figure 1).

Regarding claim 39, (See claims 26 & 31 rejections above) (See Figure 1).

Regarding claim 40, (See claims 27 & 33 rejections above) (See Figure 1).

Regarding claim 41, (See claims 28 & 34 rejections above) (See Figure 1).

Regarding claim 42, (See claims 24, 29 & 37 rejections above) (See Figures 1 & 2).

Regarding claim 43, (See claims 25, 30 & 38 rejections above) (See Figure 1).

Regarding claim 44, (See claims 26, 31 & 39 rejections above) (See Figure 1).

Regarding claim 45, (See claim 32 rejection above) (See Figures 1 & 2).

Regarding claim 46, (See claims 27, 33 & 40 rejections above) (See Figure 1).

Regarding claim 47, (See claims 28, 34 & 41 rejections above) (See Figure 1).

7. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roach (U.S. Patent Number 3869074) in view of Lewis et al., (U.S. Patent Number 666372 B2).

Roach discloses the wearable device harness (10) being worn in the operative position, the one or more retainers (50 & 52), the one or more support members (28) and the receptacle (24) (See Figures 1 & 2).

However, Roach does not disclose the outer garment shell configured to cover a user's torso when the wearable device is worn in the operative position;

the outer garment shell having one or more access openings for accessing the one or more spaces to permit the one or more retainers, the one or more support members and the receptacle to be positioned exteriorly or the other garment shell for use.

Lewis et al., teaches the outer garment shell configured to cover a user's torso when the wearable device is worn in the operative position;

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the outer garment shell (20) having one or more access openings (See Figures 1, 4 – 7) for accessing the one or more spaces to permit the one or more retainers (See center buckle strap in Figure 6), the one or more support members (32) and the receptacle (28) to be positioned exteriorly or the other garment shell (20) for use (See Figure 6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the outer garment shell configured to cover a user's torso when the wearable device is worn in the operative position;

the outer garment shell having one or more access openings for accessing the one or more spaces to permit the one or more retainers, the one or more support members and the receptacle to be positioned exteriorly or the other garment shell for use as taught by Lewis et al., with the device of Roach in order to provide environmental protection from weather conditions.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1, 2, 4, 6 – 9, 11, 13 – 48 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-

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272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



LLV



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